Supreme Court, U. S.
FILED
JUL 25 1978
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-741

DOROTHY H. FUTCH, Appellant

vs.

MARY K. O'LEARY, Appellee

DOROTHY H. FUTCH, Appellant

vs.

RUTH SIEBEN-MORGEN, Appellee

On Appeal From the Court of Appeal of the State of California, First Appellate District (Division Four)

Jurisdictional Statement

Dorothy H. Futch
Plaintiff and
Appellant
In propria persona
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San Francisco, Ca.
94102

pro se

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Opinions Below

No opinions have been reported. The opinions of the Court of Appeal of the State of California, First Appellate Dis-

trict (Division Four) are reproduced in Appendix A.

Opinions Contain Serious Errors of Fact

The opinions, as stated, contain serious errors of fact. This is a situation in which plaintiff and appellant alleged substantial compliance with the statute in question, and further alleged that full compliance was not possible without minimal cooperation from defendants' employer, and that such minimal cooperation had not been forthcoming. Both trial courts denied leave to amend and dismissed the actions.

The case of Neal vs. Gatlin (1973) 35 Cal. App. 3d 871, cited as the legal basis for the dismissals is one in which no compliance with the statute in question was alleged.

Errors of Fact Presumed Not to Affect Judgments

These errors of fact were pointed out to the Court of Appeal of the State of California, First Appellate District (Division Four) along with relevant portions of the records on appeal in petitions for rehearings, and also to the Supreme Court of the State of California in petitions for hearings. The petitions were denied. Therefore, plaintiff and appellant assumes that the errors of fact do not affect the judgments, and that denial of leave to amend and dismissal were affirmed on grounds other than those stated in the

opinions. Presumably, the grounds were lack of full compliance with the statute in question and awareness that the statute is widely used by California public entities for purposes of evading liability.

Jurisdiction

The jurisdiction of this court is invoked for appellate review of final judgments rendered by the highest court of the State of California in which decisions could be had. The decisions favored the validity of a state statute believed by plaintiff and appellant to be repugnant to the United States Constitution, especially and particularly to Amendment 14 (1).

The proceedings are complaints for libel dismissed on the basis of the claim requirements of the California Government Code. The judgments sought to be reviewed are undated. The filing date for both of them was April 7, 1978. Rehearings by the Court of Appeal of the State of California, First Appellate District (Division Four) were denied by orders dated May 3, 1978, and May 4, 1978. Hearings in the Supreme Court of the State of California were denied by orders dated June 1, 1978. Notices of appeal herein were filed on June 20, 1978, in the Court of Appeal of the State of California, First Appellate District (Division Four).

Section 1257 (2) of Title 28 of the United States Code is believed to confer jurisdiction of the appeal on this court.

Cases believed to sustain jurisdiction are First Nat. Bank of Guthrie Center vs. Anderson, Iowa (1926) 46 S. Ct. 135, 260 U. S. 341, 70 L. Ed. 295, Staub vs. City of Baxley, Ga. (1958) 78 S. Ct. 277, 355 U. S. 313, 2 L. Ed. 302, Country Club Tower Corp. vs. Tower Management Corp., D. C. Mont. 1967, 275 F. Supp. 468, and Huffman vs. Pursue, Ltd., Ohio (1975) 95 S. Ct. 1200, 420 U. S. 592, 43 L. Ed. 2d 482, rehearing denied 95 S. Ct. 1969, 421 U. S. 971, 44 L. Ed. 2d 463.

The state statute involved may be found in Statutes of California, 1962 and 1963, Vol. 2, p. 3372-3380. The statute is lengthy. Its text is reproduced in Appendix B.

Copies of orders denying rehearings in the Court of Appeal of the State of California, First Appellate District (Division Four), orders denying hearings in the Supreme Court of the State of California, and notices of appeal filed in the Court of Appeal of the State of California, First Appellate District (Division Four) are included in Appendix A.

Questions Presented

The first question presented by the appeal is whether or not it is constitutional for a state to enact a statute requiring that a claim be presented to the governing board of the employing public entity as a precedent to filing a suit against a public employee without also requiring that public entities maintain an apparatus for presenting claims to their governing boards and that they give out accurate information about such apparatus upon inquiry.

The claim requirements of the California Government Code, as stated by the California legislature, and as interpreted by the California judiciary, permit public entities to evade liability entirely for damages incurred by their employees simply by providing no apparatus for presenting claims to their governing boards. They also permit public entities to evade liability on a selective basis by providing a secret apparatus that is revealed to some claimants but not to others, and one can image to what kind of claimants such an apparatus is revealed. Needless to say, they also permit public entities to evade liability on a random basis by maintaining a random apparatus that is randomly revealed to some claimants but not to others just as the bureaucratic ball bounces and the bureaucratic cookie crumbles.

The second question presented by the appeal is whether or not it is constitutional for a state to require by statute procedures precedent to filing a suit against a public employee that are more difficult and problematical than procedures for filing the suit itself, thus creating a necessity for a full-fledged trial of the entire administration of the employing public entity before the offending public employee may be brought to trial.

It is axiomatic that a public entity that places people such as these defendants in positions of authority and maintains them in such positions without disciplining them or correcting their behavior has to be a public entity with elements of corruption in its administration. Nevertheless and speaking judicially and constitutionally, it makes no sense at all to require that a lone plaintiff be responsible for correcting and reforming the entire administration of a major California city as a precedent to filing suit against two of its dishonest employees. To set up such a requirement by statute is to guarantee immunity to government corruption and to prevent any kind of realistic action against such corruption forevermore.

The third question presented by the appeal is whether or not there is any constitutional basis for differentiating between public employees and other people in matters of liability for malicious and negligent acts. Claim procedures conducted for purposes of settling disputes and obtaining payment of damages make a lot of sense. Claim procedures conducted as a precedent to filing a suit make no sense at all. The only purpose that they serve is to create a Catch 22 method for evading liability. Private employers need prompt notification of the wrongdoing of their employees just as much as public employers do. There is no rational basis for distinguishing between them and providing extra protection for public employers by statute. That is especially true of a statute that is binding on them only "morally", but is binding on claimants as a "hurdle", to

borrow a term from one of the trial judges who ruled on these actions.

Statement of Cases

The cases concern complaints for libels perpetuated by public employees. The complaints were filed on February 1, 1977, and March 30, 1977, in the Contra Costa County Superior Court and in the Alameda County Superior Court respectively. The Federal questions were raised in what seemed to be the simplest and most direct manner. The complaints alleged libels by public employees and requested monetary relief from damages.

Prior to filing the complaints, plaintiff and appellant made every possible effort to submit claims to the employing public entity, the City of Oakland. The City of Oakland declined to accept or consider claims but accepted all of the information required by the claims statute and, presumably, gave it some consideration. Prior to filing the complaints, plaintiff and appellant directly notified the City of Oakland of her intent to do so.

At the time of filing the complaints, there was no reason to suspect the City of Oakland of bad faith or foul play. Its officials had been given ample opportunity to correct the situation and avoid litigation, and to prepare for litigation.

Plaintiff and appellant did not anticipate any difficulty with the City of Oakland in regard to the claims statute. She did,

however, anticipate difficulty with the California judiciary. Through her legal researches, she had learned the judicial history of the statute. It is largely an ignominious one. She did not dare mention the statute in the complaints for fear that pro government immunity judges would pop off and dismiss the complaints on their own motions. It was not an idle fear. That is something like what actually happened.

The City of Oakland filed motions asking for dismissal of the complaints on the basis of the claims statute. The motions were perfunctory containing no valid legal arguments or persuasive factual ones, either. There was no reason at all to grant the motions. Both trial judges virtually popped off and dismissed the actions on their own motions and simply because they wanted to. The dismissals were upheld by the Court of Appeal of the State of California, First Appellate District (Division Four) in pretty much the same spirit. The City of Oakland's defense of the appeals was even more perfunctory and less persuasive.

None of this is by way of saying that no adversary relationship exists between plaintiff and appellant and the City of Oakland. The City of Oakland welcomed the undeserved dismissals and has played shamelessly upon the vanity, snobbery, and machoism of the California judiciary in an effort to preserve them. Legal and factual arguments have been perfunctory and unpersuasive, because the City of Oakland doesn't have a leg to stand on. Its

best strategy is to hope for judicial favors.

These complaints were filed to obtain relief from oppressive libels. They were not filed to test the validity of the claims statute. Though opposed to the claims statute, plaintiff and appellant hoped to be allowed to prosecute the actions on the basis of their substantial merits. Therefore, in raising the Federal issues, she did not label them Federal issues as such, since that gives offense to the California judiciary.

All of the Federal issues were raised in opposition to the City of Oakland's motions for dismissal. Points and authorities were filed in the Contra Costa County Superior Court on May 4, 1977. They may be found on pages 11 to 14 of the Clerk's Transcript on Appeal. These points and authorities contain two and a half pages of supplemental pleadings. Judge Richard E. Arnason perceived the Federal issues and ruled on them stating that it was not his job to question the wisdom of the legislature. Plaintiff and appellant pointed out to him that complaints had been allowed to lie under similar circumstances. Judge Arnason simply retorted that other judges could allow them to, but that he did not intend to do so. Although his rulings were cursory and flippant, and his attitude toward plaintiff and appellant was contemptuous, the judicial history of the statute contains a lot of support for his point-of-view, along with a lot of material that would controvert it.

Judge Arnason's rulings may be found in the Reporter's Transcript on Appeal, page 5, lines 24 to 28, and page 6, lines 1 to 9. In reporting the hearing, Judge Arnason's court reporter seems to have recorded faithfully every uh and youknow uttered by plaintiff and appellant but to have omitted and altered quite a bit of Judge Arnason's discourse. Plaintiff and appellant has not the slightest doubt in the world that this was done in an attempt to influence the decision of the Court of Appeal.

Points and authorities were filed in the Alameda County Superior Court on July 5, 1977. They contained nine and a half pages of supplemental pleadings and may be found in the Clerk's Transcript on Appeal, pages 60 to 70. Plaintiff and appellant has no way of knowing whether or not Judge John P. Sparrow perceived the Federal issues, because he dismissed the action without a hearing indicating his willingness to sign any opinion that the City Attorney's Office wanted him to sign. The Alameda County Superior Court is located right in the heart of the City of Oakland. However, it was not possible to avoid filing there, because the defendant resides in Alameda County.

The Federal issues were raised in the Court of Appeal by assignment of error. The Court of Appeal ignored them all, but it ruled independently on the Federal issues as they are perceived by too many members of the California judiciary. The Court of Appeal upheld Judge John P. Sparrow's dismissal without a hearing on the ground that plaintiff and appellant questioned the validity of the claims statute. In short, the appellate justices told plaintiff and appellant to go to Washington with her Federal issues. As far as they are concerned, raising such an issue in a California courtroom is proper ground for dismissal. Their unpublished opinion is available in Appendix A. The Federal issues were raised explicitly by assignment of error and exceptions in petitions for rehearings that were denied.

The appellate courts of Southern California have given more consideration to the Constitutional implications of the claims statute and of other California statutes, as well. Their better tradition and the impropriety of the rulings of the First District Court of Appeal were pointed out thoroughly to the Supreme Court of the State of California in petitions for hearings. The petitions were denied. Therefore, plaintiff and appellant believes that the issues are ripe for plenary consideration.

The Federal Questions are Substantial

Despite the frivolous treatment that they have received from the California judiciary, the Federal questions are substantial. Although it may not be a trial judge's job to question the wisdom of the legislature, it is the job of the California judiciary to interpret the provisions of state statutes so as not to abrogate basic Constitutional rights. Many trial judges have done just that with the claims

statute, but many have not. Those who have not seem willing to admit that the statute is unconstitutional, but they maintain that their hands are tied by the legislature. Whether or not it is really true that their hands are tied by the legislature, it is really true that the claims statute stands as an unconstitutional barrier to the prosecution of suits against public employees on the basis of their substantial merits, and that it stands as a barrier, ultimately, to responsible government.

The governing boards of public entities are protected by armies of bureaucrats and surrounded by walls of red tape and moats of indifference. They don't have to accept or consider claims if they don't want to, and they don't want to. It will just cost them time and money and contribute nothing to their re-election. It is unbelievable that Judge Richard E. Arnason expects claimants to "hurdle" all of that. It is more likely that he expects public employees to be allowed to get away with their wrongdoing, and that is fundamentally unconstitutional, a denial of due process and equal protection of the laws to a considerable segment of the citizenry of the state.

The Claim Requirements of the California Government Code are Unconstitutional

The claim requirements of the California Government Code as they are written, and as they are interpreted by the California judiciary, are unconstitutional because they make access to the courts for redress

of wrongs committed by public employees dependent upon the will of the members of governing boards of public entities, who may choose to make their own lives easier and more comfortable by not permitting it.

In the case of Staub vs. City of Baxley, Ga. (1958) 78 S. Ct. 277, 355 U. S. 313, 2 L. Ed. 302, the United States Supreme Court ruled that a constitutionally guaranteed right could not be made contingent upon the will of the governing board of a municipality. In ruling that it was necessary for plaintiff and appellant to file a claim with the governing board of the City of Oakland, whether or not the City of Oakland would allow her to, Judge Arnason made access to the courts to obtain the protection of laws against libel contingent upon the will of the governing board of a municipality. Judge John P. Sparrow did the same thing in a more direct and forthright manner by indicating that he would sign any opinion that the City of Oakland wanted him to sign.

The justices of the Court of Appeal, First Appellate District (Division Four) didn't uphold all of that exactly, but they did uphold a most unconscionable denial of due process and contributed to it themselves in what seems to have been a concerted effort to avoid the real issues of the appeals.

Plaintiff and Appellant Has Been Denied Due Process and Equal Protection of the Law

In the case of Country Club Tower Corp.

vs. Tower Management Corp. D. C. Mont. 1967, 275 F. Supp. 468, the United States District Court, D. Montana, Great Falls Division, ruled that denying a plaintiff the opportunity to be heard or to have meaningful participation in the resolution of a controversy was a denial of due process under the Fourteenth Amendment to the United States Constitution, that it constituted a Federal issue, and that the United States Supreme Court held appellate jurisdiction in such a case.

There has been a most unconscionable denial of due process throughout the proceedings of these actions. Beginning with Judge Richard E. Arnason's controverting on the basis of nothing but his own ignorance allegations made by plaintiff and appellant on the basis of personal knowledge of the facts, his refusing to accept a preponderance of the evidence as conclusive of the issues, and pointedly ignoring the crucial question of the City of Oakland's willingness to consider a claim, to Judge John P. Sparrow's dismissing the action against defendant Sieben-Morgen without a hearing, signing a judgment pre-prepared by the City Attorney's Office, and not bothering to read it, leaving all issues unresolved but his partiality, to the First District Court of Appeal's grounding its decisions on obvious errors of fact and law and denying a rehearing to correct the obvious errors, there has been a dismal lack of fairness and abdication of responsibility on the part of the California judiciary. Plaintiff and appellant is eligible to maintain these actions under any

but the most stringent and harshest interpretation of the claim requirements of the California Government Code. She has been met with a shameful unwillingness to grant hearings, to grant the presumption of truthfulness that is the right of every witness, and to grant decisions that acknowledge the verities of the situation and provide sound basis for appeal.

In view of the fact that the harshest and most stringent application of the claim statute has been imposed on plaintiff and appellant, and on other litigants as well, the statute must be evaluated constitutionally on the basis of that application. Since the California judiciary may refuse to accept common sense compliance and may demand a certainty of proof of evasionary tactics such as may be obtained only by a full-fledged adversary trial of the entire administration of the employing public entity as a precedent to filing suit against a public employee, the claims statute is thoroughly unconstitutional.

This employing public entity received ample warning of the wrongdoing of these defendants and could have avoided liability by correcting their behavior. The fact that its officials chose not to do so shows how little the claims statute serves the public interest and how much it serves the unconstitutional interests of corrupt government instead.

It may well be that these defendants are themselves the victims of malicious and dishonest superiors. If they wish to guar-

antee their positions by protecting their superiors and covering up for them, they may do so, but plaintiff and appellant demands her right not to participate in such corruption, and to use the courts to obtain the protection of the laws against libel to restore her standing in a profession that she prepared for extensively and practiced for twenty-five years, which standing has been destroyed by these two malicious, dishonest, and corrupt public employees. She has no obligation to prosecute and reform the administration of the employing public entity as a precedent to litigating these causes of action.

Plaintiff and Appellant Has Pled Sufficient Causes of Action Based on the Constitution

In the case of First Nat. Bank of Guthrie Center vs. Anderson, Iowa 1926, 46 S. Ct. 135, 260 U. S. 341, 70 L. Ed. 295, the United States Supreme Court ruled that whether or not a pleading sets up a sufficient right of action based on the Constitution is a Federal question, and where a case from a state court presents that question, the United States Supreme Court must determine for itself the sufficiency of the allegations. Plaintiff and appellant submits that she has pled sufficient causes of action based on the Constitution in that one's standing in one's profession is fundamental and implied by rights to life, liberty, and the pursuit of happiness. No one should be deprived of a hard earned and well deserved professional standing without due process of law.

Moreover, a statute that pits an individ-

ual against a bureaucracy of thousands and requires the individual to "hurdle" the hostility, indifference, incompetence, and corruption of all of them as a precedent to anything has to be unconstitutional. That may not have been the intent of the California legislature, but that is the interpretation placed on the claims statute by too many members of the California judiciary, and that interpretation has held up all the way to the United States Supreme Court, where it now lies.

In the case of Huffman vs. Pursue, Ltd., Ohio 1975, 95 S. Ct. 1200, 420 U. S. 592, 43 L. Ed. 2d 485, the United States Supreme Court once again upheld the right of appeal where the final decision of a state court has sustained the validity of a state statute challenged on Federal and Constitutional grounds.

Conclusion

For the foregoing reasons, it is respectfully submitted that probable jurisdiction should be noted.

July 15, 1978

Dorothy H. Futch
Plaintiff and
Appellant
In propria persona

(Appendices follow)

Opinion of the Court of Appeal of the State of California, First Appellate District, Division Four, Justices Thomas W. Caldecott, Winslow Christian, and Joseph G. Wilson in 1/Civil 42802 (Superior Court No. 171708)

Dorothy Futch appeals from a judgment of dismissal which was rendered after the court sustained a demurrer by respondent Mary K. O'Leary to appellant's complaint.

The complaint sought judgment for general and exemplary damages against respondent upon allegations that respondent had inserted in a report, concerning appellant's performance as an employee of the City of Oakland, false and defamatory material. In support of respondent's demurrer it was pointed out that, although the complaint alleged the commission of a tort by a public employee acting within the course and scope of her employment, there was no allegation of compliance with the claims statute. At the hearing on the demurrer, the court pointed this deficiency out to appellant but appellant declined to seek relief from lateness in filing a claim, stating that she would appeal if the court rendered a judgment of dismissal.

The court acted correctly when it sustained the general demurrer and dismissed the complaint. (Neal vs. Gatlin (1973) 35 Cal. App. 3d 871.) The judgment is affirmed.

The preceding opinion was undated, unsigned, and unpublished. It appears to

have been written by Justice Christian with Justices Caldecott and Wilson concurring. It was filed with the Clerk of the Court of Appeal, State of California, First Appellate District on April 7, 1978.

Opinion of the Court of Appeal of the State of California, First Appellate District, Division Four, Justices Thomas W. Caldecott, Winslow Christian, and Joseph G. Wilson in 1/Civil 43138 (Superior Court No. 493580-3)

Dorothy H. Futch appeals from a summary judgment (Code Civ. Proc., Section 437 (c)) dismissing her complaint by which she sought recovery for libel allegedly committed by respondent Ruth Sieben-Morgen.

It was alleged in appellant's complaint that she was employed at the Oakland Public Library and that respondent wrote and transto superiors three performance reports containing allegedly defamatory material. Copies of the performance reports were attached to the complaint and incorporated in it. Respondent answered, denying liability, and moved for summary judgment on the ground of appellant's failure to comply with the claims statute.

When it was thus pointed out to appellant that her complaint was defective in that it alleged facts bringing the claims statute into play but did not allege compliance with the statute (see Neal v. Gatlin (1973) 35 Cal. App. 3d 871) appellant did not seek to amend her complaint to show compliance; instead, she filed points and au-

thorities challenging the applicability of the statute. It was proper for the court to grant summary judgment.

Affirmed.

The preceding opinion was undated, unsigned, and unpublished. It appears to have been written by Justice Christian with Justices Caldecott and Wilson concurring. It was filed with the Clerk of the Court of Appeal, State of California, First Appellate District on April 7, 1978.

Order of the Court of Appeal of the State of California, First Appellate District, Division Four, Denying Rehearing of No. 42802, Futch vs. O'Leary

By the Court: The petition for rehearing in the above entitled cause is hereby denied.

The preceding order was dated May 3, 1978, and stamped with the name of Caldecott, P. J. It was filed with the Clerk of the Court of Appeal, State of California, First Appellate District on May 3, 1978.

Order of the Court of Appeal of the State of California, First Appellate District, Division Four, Denying Rehearing of No. 43138, Futch vs. Sieben-Morgen

By the Court: The petition for rehearing in the above entitled cause is hereby denied.

The preceding order was dated May 4, 1978, and stamped with the name of Caldecott, P. J. It was filed with the Clerk of the Court of Appeal, State of California, First Appellate District on May 4, 1978.

Order of the Supreme Court of the State of California In Re: 1 Civ. No. 42802, Futch vs. O'Leary

I have this day filed Order hearing denied In re: 1 Civ. No. 42802, Futch vs. O'Leary. Respectfully,

The preceding order was dated June 1, 1978, and printed with the name G. E. Bishel, Clerk. It was filed in the Clerk's Office, Supreme Court, 4250 State Bldg., San Francisco, Ca. 94102, on June 1, 1978.

Order of the Supreme Court of the State of California In Re: 1 Civ. No. 43138, Futch vs. Sieben-Morgen

I have this day filed Order hearing denied In re: 1 Civ. No. 43138, Futch vs. Sieben-Morgen. Respectfully,

The preceding order was dated June 1, 1978, and printed with the name of G. E. Bishel, Clerk. It was filed in the Clerk's Office, Supreme Court, 4250 State Bldg., San Francisco, Ca. 94102, on June 1, 1978.

Notice of Appeal To The Supreme Court of the United States From the Judgment of the Court of Appeal of the State of California, First Appellate District, Division Four, in the Case of Futch vs. O'Leary, 1/Civil 42802

NOTICE IS HEREBY GIVEN that DOROTHY H. FUTCH, plaintiff and appellant herein, hereby appeals to the Supreme Court of the United States from the judgment of this court entered on May 7, 1978, a hearing on which was denied by the California Supreme Court on June 1, 1978.

This appeal is taken pursuant to Section 1257 (2) of Title 28 of the United States Code.

The preceding notice of appeal was dated June 11, 1978, and signed by plaintiff and appellant. It was filed with the Clerk of the Court of Appeal, State of California, First Appellate District on June 20, 1978.

Proof of Service By Mail of Notice of Appeal to the Supreme Court of the United States From the Judgment of the Court of Appeal of the State of California, First Appellate District, Division Four, in the Case of Futch vs. O'Leary, 1/Civil 42802

I declare that I am a citizen of the United States of America, over the age of 18 years; my business address and place of business is "Your Branch Office", 311 California St., San Francisco; and I am not a party to the within action. On the date

shown below I deposited a true copy of the above-entitled document in the mail in the City of San Francisco by placing it in a sealed envelope with postage thereon fully prepaid and addressed as follows: Mr. David A. Self, City Attorney, 503 City Hall, 1421 Washington St., Oakland, Ca. 94612

Executed on June 13, 1978, at San Francisco, California.

I declare under penalty of perjury that the foregoing is true and correct.

The preceding proof of service by mail was signed by Ms. Terry LaRue and filed with the Clerk of the Court of Appeal, State of California, First Appellate District on June 20, 1978.

Notice of Appeal To The Supreme Court of the United States From the Judgment of the Court of Appeal of the State of California, First Appellate District, Division Four, in the Case of Futch vs. Sieben-Morgen, 1/Civil 43138

NOTICE IS HEREBY GIVEN that DOROTHY H. FUTCH, plaintiff and appellant herein, hereby appeals to the Supreme Court of the United States from the judgment of this court entered on May 7, 1978, a hearing on which was denied by the California Supreme Court on June 1, 1978.

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Proof of Service by Mail of Notice of Appeal to the Supreme Court of the United States From the Judgmentof the Court of Appeal of the State of California, First Appellate District, Division Four, in the Case of Futch vs. Sieben-Morgen, 1/Civil 43138

I declare that I am a citizen of the United States of America, over the age of 18 years; my business address and place of business is "Your Branch Office", 311 California St., San Francisco; and I am not a party to the within action. On the date shown below I deposited a true copy of the above-entitled document in the mail in the City of San Francisco by placing it in a sealed envelope with postage thereon fully prepaid and addressed as follows: Mr. David A. Self, City Attorney, 503 City Hall, 1421 Washington St., Oakland, Ca. 94612

Executed on June 13, 1978, at San Francisco, California.

The preceding proof of service by mail was signed by Ms. Terry LaRue and filed with the Clerk of the Court of Appeal, State of California, First Appellate District on June 20, 1978.

Statutes of California, 1962 and 1963, Vol. 2, p. 3372-80

Part 3. Claims Against Public Entities

Chapter 1. General

Article 1. Definitions

900. Unless the provision or context otherwise requires, the definitions contained in this article govern the construction of this part.

900.2. "Board" means:

(a) In the case of a local public entity, the governing body of the local public entity.

(b) In the case of the State, the State Board of Control.

900.4. "Local public entity" includes a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the State, but does not include the State.

900.6. "State: means the State and any office, officer, department, division, bureau, board, commission or agency of the

State claims against which are paid by warrants drawn by the Controller.

901. For the purpose of computing the time limits prescribed by Sections 911.2, 911.4 and 912, the date of the accrual of a cause of action to which a claim relates is the date upon which the case of action would be deemed to have accrued within the meaning of the statute of limitations which would be applicable thereto if there were no requirement that a claim be presented to and be acted upon by the public entity before an action could be commenced thereon.

Article 2. General Provisions

905. There shall be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of this part all claims for money or damages against local public entities except:

(a) Claims under the Revenue and Taxation Code or other statute prescribing procedures for the refund, rebate, exemption, cancellation, amendment, modification or adjustment of any tax, assessment, fee or charge or any portion thereof, or of any penalties, costs or charges related thereto.

(b) Claims in connection with which the filing of a notice of lien, statement of claim, or stop notice is required under any provision of law relating to mechanics', laborers' or materialmen's liens.

(c) Claims by public employees for fees, salaries, wages, mileage or other expenses and allowances.

(d) Claims for which the workmen's compensation authorized by Division 4 (commencing with Section 3201) of the Labor Code is the exclusive remedy.

(e) Applications or claims for any form of public assistance under the Welfare and Institutions Code or other provisions of law relating to public assitance programs, and claims for goods, services, provisions or other assistance rendered for or on behalf of any recipient of any form of public assistance.

(f) Applications or claims for money or benefits under any public retirement or pension system.

(g) Claims for principal or interest upon any bonds, notes, warrants, or other evidences of indebtedness.

(h) Claims which relate to a special assessment contituting a specific lien against the property assessed and which are payable from the proceeds of such an assessment by offset of a claim for damages against it or by delivery of any warrant or bonds representing it.

(i) Claims by the State or by a state department or agency or by another local public entity.

(j) Claims arising under any provi-

sion of the Unemployment Insurance Code, including but not limited to claims for money or benefits, or for refunds or credits of employer or worker contributions, penalties, or interest, or for refunds to workers of deductions from wages in excess of the amount prescribed.

(k) Claims for the recovery of penalties or forfeitures made pursuant to Article 1 (commencing with Section 1720) of Chapter 1 of Part 7 of Division 2 of the Labor Code.

(l) Claims governed by the Pedestrian Mall Law of 1960, Part 1 (commencing with Section 11000) of Division 13 of the Streets and Highways Code.

905.2. There shall be presented in accordance with Chapter 1 (commencing with Section 910) of this part all claims for money or damages against the State:

(a) For which no appropriation has been made or for which no fund is available but the settlement of which has been provided for by Statute or constitutional provision.

(b) For which the appropriation made or fund designated is exhausted.

(c) For money or damages (1) on express contract, (2) for an injury for which the State is liable or (3) for the taking or damaging of private property for public use within the meaning of Section 14 of Article 1 of the Constitution.

(d) For which settlement is not otherwise provided for by statute or constitutional provision.

905.4. Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of this part shall not be construed to be an exclusive means for presenting claims to the Legislature nor as preventing the Legislature from making such appropriations as it deems proper for the payment of claims against the State which have not been submitted to the board or recommended for payment by it pursuant to Chapters 1 and 2 of this part.

905.6. This part does not apply to claims against the Regents of the University of California.

905.8. Nothing in this part imposes liability upon a public entity unless such liability otherwise exists.

Chapter 2. Presentation and Consideration of Claims

Article 1. General

910. A claim shall be presented by the claimant or by a person acting on his behalf and shall show:

(a) The name and post office address of the claimant;

(b) The post office address to which the person presenting the claim desires notices to be sent;

(c) The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted;

(d) A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim; and

(e) The name or names of the public employee or employees causing the injury, damage, or loss, if known.

(f) The amount claimed as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed.

910. 2. The claim shall be signed by the claimant or by some person on his behalf. Claims against local public entities for supplies, materials, equipment or services need not be signed by the claimant or on his behalf if presented on a bill head or invoice regularly used in the conduct of the business of the claimant.

910.4. The Board may provide forms specifying the information to be contained in claims against the public entity. If the board provides forms pursuant to this section, the person presenting a claim need not use such form if he presents his claim in conformity with Sections 910 and 910.2. If he uses the form pursuant to

this section and complies substantially with its requirements, he shall be deemed to have complied with Sections 910 and 910.2.

910.6. (a) A claim may be amended at any time before the expiration of the period designated in Section 911.2 or before final action thereon is taken by the board, whichever is later, if the claim as amended relates to the same transaction or occurrence which gave rise to the original claim. The amendment shall be considered a part of the original claim for all purposes.

(b) A failure or refusal to amend a claim, whether or not notice of insufficiency is given under Section 910.8 shall not constitute a defense to any action brought upon the cause of action for which the claim was presented if the court finds that the claim as presented complied substantially with Section 910 and 910.2 or a form provided under Section 910.4.

910.8. (2) If in the opinion of the board or the person designated by it a claim as presented fails to comply substantially with the requirements of Sections 910 and 910.2 or with the requirements of a form provided under Section 910.4 if a claim is presented pursuant thereto, the board or such person may, at any time within 20 days after the claim is presented, give written notice of its insufficiency, stating with particularity the defects or omissions therein.

(b) Such notice may be given personally to the person presenting the claim or by mailing it to the address, if any, stated in the claim as the address to which the person presenting the claim desires notices to be sent. If no such address is stated in the claim, the notice may be mailed to the address, if any, of the claimant as stated in the claim.

(b) The board may not take action on the claim for a period of 15 days after such notice is given.

911. Any defense as to the sufficiency of the claim based upon a defect or omission in the claim as presented is waived by failure to give notice of insufficiency with respect to such defect or omission as provided in Section 910.8, except that no notice need be given and no waiver shall result when the claim as presented fails to state either an address to which the person presenting the claim desires notices to be sent or an address of the claimant.

911.2. A claim relating to a cause of action for death or injury to person or to personal property or growing crops shall be presented as provided in Article 2 (commencing with Section 915) of this chapter not later than the 100th day after the accrual of the cause of action. A claim relating to any other cause of action shall be presented as provided in Article 2 (commencing with Section 915) of this chapter not later than one year after the accrual of the cause of action.

911.4. When a claim that is required by Section 911.2 to be presented not later than the 100th day after the accrual of the cause of action is not presented within such time, a written application may be made to the public entity for leave to present such a claim. The application shall be presented to the public entity as provided in Article 2 (commencing with Section 915) of this chapter within a reasonable time not to exceed one year after the accrual of the cause of action and shall state the reason for the delay in presenting the claim. The proposed claim shall be attached to the application.

911.6. (a) The board shall grant or deny the application within 35 days after it is presented to the board. If the board does not act upon the application within 35 days after the application is presented, the application shall be deemed to have been denied on the 35th day.

(b) The board shall grant the application where:

(1) The failure to present the claim was through mistake, inadvertence, surprise or excusable neglect and the public entity was not prejudiced by the failure to present the claim within the time specified in Section 911.2; or

(2) The claimant was a minor during all of the time specified in Section 911.2 for the presentation of the claim; or

(3) The claimant was physically or mentally incapacitated during all of the time specified in Section 911.2 for the presentation of the claim and by reason of such disability failed to present a claim during such time; or

(4) The claimant died before the expiration of the time specified in Section 911.2 for the presentation of the claim.

911.8. Written notice of the board's action shall be given to the claimant personally or by mailing it to the address, if any, stated in the proposed claim as the address to which the person making the application desires notices to be sent. If no such address is stated in the claim, the notice shall be mailed to the address, if any, of the claimant as stated in the claim. No notice need be given when the proposed claim fails to state either an address to which the person presenting the claim desires notices to be sent or an address of the claimant.

912. (a) As used in this section, "superior court" means:

(1) In the case of a claim against a local public entity, the superior court of the county in which the local public entity has its principal office.

(2) In the case of a claim against the State, the superior court of any county in which the Attorney General has an office.

(b) The superior court shall grant leave to present a claim after the expiration of the time specified in Section 911.2 if the court finds that the application to the board under Section 911.4 was made within a reasonable time not to exceed one year after the accrual of the cause of action and was denied or deemed denied pursuant to Section 911.6 and that:

(1) The failure to present the claim was through mistake, inadvertence, surprise or excusable neglect unless the public entity against which the claim is made establishes that it would be prejudiced if leave to present the claim were granted; or

(2) The claimant was a minor during all of the time specified in Section 911.2 for the presentation of the claim; or

(3) The claimant was physicially or mentally incapacitated during all of the time specified in Section 911.2 for the presentation of the claim and by reason of such disability failed to present a claim during such time; or

(4) The claimant died before the expiration of the time specified in Section 911.2 for the presentation of the claim.

(c) Application to the superior court for leave to present a claim under this section must be made by a petition showing (1) that application was made to the board under Section 911.4 and was denied

or deemed denied and (2) the reason for the failure to present the claim. A copy of the proposed claim shall be attached to the petition. The petition shall be filed within 20 days after the application to the board is denied or deemed denied.

(d) A copy of the petition and the proposed claim and a written notice of the time and place of hearing thereof shall be served (1) on the clerk or secretary or board of the local public entity if the claim is against a local public entity, or (2) on the State Board of Control or its secretary if the claim is against the State, not less than 10 days before the hearing.

(e) The court shall make an independent determination upon the application. The determination shall be made upon the basis of the petition, any affidavits in support of or in opposition to the petition, and any additional evidence received at the hearing on the petition.

912.2. If any application for leave to present a claim is granted by the board pursuant to Section 911.6, or if a petition for leave to present a claim is granted by the court pursuant to Section 912, the claim shall be deemed to have been presented to the board upon the day that leave to present the claim is granted.

912.4. The board shall act on a claim in the manner provided in Section 912.6 or 912.8 within 45 days after the claim

has been presented. If a claim is amended, the board shall act on the amended claim within 45 days after the amended claim is presented. The claimant and the board may extend the period within which the board is required to act on the claim by written agreement made before or after the expiration of such period. If the board fails or refuses to act on a claim within the time prescribed by this section, the claim shall be deemed to have been rejected by the board on the last day of the period within which the board was required to act upon the claim. If the period within which the board is required to act is extended by agreement, whether made before or after the expiration of such period, the last day of the period within which the board is required to act shall be the last day of the period specified in such agreement.

912.6. (a) In the case of a claim against a local public entity, the board may act on a claim in one of the following ways:

(1) If the board finds the claim is not a proper charge against the public entity, it shall reject the claim.

(2) If the board finds the claim is a proper charge against the public entity and is for an amount justly due, it shall allow the claim.

(3) If the board finds the claim is a proper charge against the public entity but is for an amount greater than is just-

ly due, it shall either reject the claim or allow it in the amount justly due and reject it as to the balance.

(4) If legal liability of the public entity or the amount justly due is disputed, the board may reject the claim or may compromise the claim.

(b) In the case of a claim against a local public entity, if the board allows the claim in whole or in part or compromises the claim, it may require the claimant, if he accepts the amount allowed or offered to settle the claim to accept it in settlement of the entire claim.

912.8. In the case of claims against the State, the board shall act on claims in accordance with such procedure as the board, by rule, may prescribe. It may hear evidence for and against them and, with the approval of the Governor, report to the Legislature such facts and recommendations concerning them as it deems proper. In making recommendations the board may state and use any official or personal knowledge which any member may have touching any claim. The board may authorize any employee of the State to perform such functions of the board under this part as are prescribed by the board; but, subject to Section 935.6, the board may not authorize an employee to allow, compromise or settle a claim.

913. Written notice of any action taken under Section 912.6 or 912.8 rejecting a claim in whole or in part shall be given

to the person who presented the claim. Such notice may be given by mailing it to the address, if any, stated in the claim as the address to which the person presenting the claim desires notice to be sent. If no such address is stated in the claim, the notice may be mailed to the address, if any, of the claimant as stated in the claim. No notice need be given when the claim fails to state either an address to which the person presenting the claim desires notices to be sent or an address of the claimant.

913.2. The board may, in its discretion, within the time prescribed by Section 945.6 for commencing an action on the claim, re-examine a previcusly rejected claim in order to consider a settlement of the claim.

Article 2. Manner of Presentation and of Giving Notice

915. (a) A claim, any amendment thereto, or an application to the public entity for leave to present a late claim shall be presented to a local public entity by:

(1) Delivering it to the clerk, secretary or auditor thereof; or

(2) Mailing it to such clerk, secretary or auditor or to the governing body at tis principal office.

(b) A claim, any amendment thereto, or an application for leave to file a late claim shall be presented to the State by:

(1) Delivering it to an office of the State Board of Control; or

(2) Mailing it to the State Board of Control at its principal office.

(c) A claim, amendment or application shall be deemed to have been presented in compliance with this section even though it had not delivered or mailed as provided in this section if it is actually received by the clerk, secretary, auditor or board of the local public entity, or is actually received at an office of the State Board of Control, within the time prescribed for presentation thereof.

915.2. If a claim, amendment to a claim or application to a public entity for leave to present a late claim is presented or sent by mail under this chapter, or if any notice under this chapter is given by mail, the claim, amendment, application or notice shall be mailed in the manner prescribed in this section. The claim, amendment, application or notice must be deposited in the United States post office, or a mailbox, subpost office, substation, or mail chute, or other like facility regularly maintained by the government of the United States, in a sealed envelope, properly addressed, with postage paid. The claim, amendment, application or notice shall be deemed to have been presented and received at the time of the deposit. Proof of mailing may be made in the manner prescribed by Section 1013a of the Code of Civil Procedure.